REMARKS/ARGUMENTS

In the restriction requirement dated December 17, 2007, the Examiner delineated the following inventions as being patentably distinct:

Group I, Claims 1-4 and 12-19, drawn to a Pks13 protein comprising SEQ ID NO: 1 from *Mycobacterium tuberculosis*;

Group II, Claims 5-8 and 20, drawn to vector, host cell expressing a polynucleotide encoding protein of SEQ ID NO: 1 and method of preparing protein of SEQ ID NO: 1 using said host cell;

Group III, Claim 9, method of inhibiting the biosynthesis of mycolata envelope in a bacteria by inhibiting the expression of the protein of group 1; and

Group IV, Claims 10-11, method of screening an antibiotic against a bacteria that capable of synthesizing mycolic acid.

Applicants provisionally elect, with traverse, the invention of Group IV (Claims 10-11 drawn to a method of screening an antibiotic against bacteria that are capable of synthesizing mycolic acid).

The claims of Groups I-IV are integrally linked as compounds, method of making and method of use.

It has been held that compound claims, method of making, and method of use are properly presented as a single invention wherein the sole disclosed utility of the compound is that recited in the compound (composition) claims. Ex parte Brack (POBA 1961) 134 USPQ 445.

Restriction between a chemical product and a process for its production is proper when the product can be produced by another method. The Examiner has failed to show that other methods can be used for the production of SEQ ID NO: 1.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct. Restriction between the product and the method of its use is proper when the product can find other uses. Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not provided sufficient reasons and/or examples to support patentable distinctness. Product, method of use, and preparation of said product are interdependent and should be examined together on the merits, especially wherein the said disclosed utility of the product is that recited in the specification 37 C.F.R. § 1.475(b) and unity of invention between the groups exists.

Applicants submit that while PCT Rule 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(e) provides in relevant part that "a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to product, manufacture of said product, and the method of use of said product." The determination of whether a group of inventions is so linked as to form a single general inventive concept should be made without regard to whether the inventions are claimed as separate claims or as alternative within a single claim.

Further, the MPEP at § 803 states as follows:

> "If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions."

Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility.

For the reasons set forth above, Applicants request that the restriction requirement be withdrawn.

Applicants further request that if the invention of Group IV is found allowable withdrawn Groups I, II, and III which include the limitation of the allowable claims be rejoined.

Respectfully submitted,

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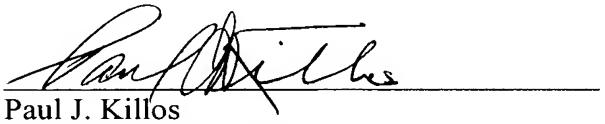

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